

FEDERAL SECTION

Federal Communications Commission

DA 00-1572

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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. <u>99-343</u>
Table of Allotments,	)	RM-9750
FM Broadcast Stations.	)	
(Elberton and Lavonia, Georgia)	)	
	)	
In re Application of	)	
	)	
Waves of Mercy Productions, Inc.	)	BPED-19990630MB
Pendergrass, Georgia	)	
	)	
For Construction Permit for New	)	
Noncommercial Educational FM Station	)	

**REPORT AND ORDER  
(Proceeding Terminated)**

**Adopted: July 5, 2000****Released: July 14, 2000**

By the Chief, Allocations Branch:

1. At the request of Radio Elberton, Inc. ("petitioner"), the Commission has before it the Notice of Proposed Rule Making, 14 FCC Rcd 21139 (1999), proposing the reallocation of Channel 221A from Elberton, Georgia, to Lavonia, Georgia, as the community's first local aural service, and the modification of Station WWRK-FM's license accordingly. Comments and reply comments were filed by the petitioner. No other comments were received.

2. As stated in the Notice, petitioner seeks to provide Lavonia, a community of 1,840 persons, with its first local aural service. The reallocation of Channel 221A to Lavonia would also enable Station WWRK-FM to operate as a 6 kilowatts Class A station instead of being limited to its present power of 3 kilowatts. This increase in power could enable the station to provide service to 60,810 persons within a 2,511 square mile area, an increase of 183 percent from its present 21,488 persons within a 1,732 square mile area. A staff engineering study also confirmed that Lavonia is not located within any Urbanized Area and the station's 70 dBu contour would not encompass any portion of an Urbanized Area. Elberton would continue to receive local aural service from FM Station WEHR, Channel 286A, and AM Station WSGC. Further, while all of the people within Station WWRK-FM's present reception area will lose service because there will be no overlap of the present and proposed 60 dBu contours, we recognized that the entire loss area will continue to be considered well-served with five or more fulltime aural services. However, we noted that petitioner's proposal is mutually exclusive with the earlier-filed application of Waves of Mercy Productions, Inc. ("Waves of Mercy"), for noncommercial educational Channel 220A at Pendergrass, Georgia (BPED-19990630MB), since the two communities are located approximately 46 kilometers apart while the Commission's Rules specify

a minimum separation of 72 kilometers for first-adjacent Class A channel. Because the Waves of Mercy application had not been placed on the cut-off Public Notice at the time petitioner's proposal was filed, the Notice requested comments on both the application and petition.<sup>1</sup> Parties were advised that their comments should be guided by the Commission's allotment priorities and that the same allotment priorities are applicable to both commercial and noncommercial channels.<sup>2</sup>

3. In response, petitioner states that a comparison of the two proposals shows that the reallocation of Channel 221A from Elberton to Lavonia, as its first local aural service, is clearly preferable. Using the Commission's allotment priorities, petitioner states that there are virtually no populated areas of the country which do not already receive first and second reception services. Therefore, it contends that the highest allotment priority remaining is Priority (3), the provision of a first local aural service. Comparing the two communities, petitioner contends that the significant difference in population (1,840 vs. 298 persons), in and of itself, warrants the allotment of Channel 221A to Lavonia. In support, it cites Powhatan and Goochland, Virginia, 12 FCC Rcd 3191 (1997) (channel allotted to community with larger population). Petitioner also submits that its proposal should be preferred under Priority (4), other public interest matters, because the allotment of Channel 221A at Lavonia would provide service to an additional 43,393 persons while the allotment of Channel 221A to Pendergrass would provide service to only 3,620 persons. In reply comments, petitioner reiterates its intention to apply for Channel 221A, if allotted to Lavonia, and also notes that neither Waves of Mercy nor any other party submitted comments comparing the two proposals.

4. We believe the public interest would be served by reallocating Channel 221A from Elberton to Lavonia, Georgia, as the community's first local aural service, finding that this action will result in a preferential arrangement of allotments.<sup>3</sup> Although Waves of Mercy did not respond to either the Notice of Proposed Rule Making or the comments of petitioner, we have compared the two proposals as there is no alternate channel which can be allotted to either community. Neither allotment under consideration herein would provide either a first or second fulltime reception service. Therefore, our decision is based on Priority (3), the provision of a first local aural service. Lavonia has a population approximately six times greater than that of Pendergrass. In addition, we find that although Pendergrass does have some of the attributes associated with being a community for allotment purposes, such as a library, several restaurants, and a post office, our research shows that one of the two zip codes (30575) assigned to Pendergrass actually reflects a Tolmo post office, while the other zip code (30567) is attributed with serving 1,956 people, thus reflecting its use as more than a city post

<sup>1</sup> See, 7 FCC Rcd 4917, fn.1 (1992). Applications for new stations in the reserved FM band will be protected at the end of the 30-day period for filing mutually exclusive applications as established in periodically released Commission Public Notices.

<sup>2</sup> The allotment priorities are: (1) first fulltime aural service; (2) second fulltime aural service; (3) first local aural service; and (4) other public interest matters. Priorities (2) and (3) are given co-equal weight. See, Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982). See also, Sacred Heart University, Inc., et al., 7 FCC Rcd 3466 at 3470 (1992).

<sup>3</sup> See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990).

office. Further, according to the 1990 U.S. Census, of the 138 workers over 16 years of age residing in Pendergrass, only 20 worked in Pendergrass and 118 worked outside of the community. This same U.S. Census data shows that of the 547 workers over 16 years of age residing in Lavonia, 384 people work within the community. In addition, Lavonia has its own city government, city hall, fire department, city maintenance department, elementary school, numerous restaurants, churches, banks and several retail stores. Therefore, we find that, consistent with Commission precedent, Lavonia is to be preferred based on its larger population for a first local aural service. See, Powhatan and Goochland, Virginia, supra, Obion and Tiptonville, Tennessee, 7 FCC Rcd 2644 (1992), and West Liberty and Richwood, Ohio, 6 FCC Rcd 6084 (1991).

5. Channel 221A can be allotted to Lavonia in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.5 kilometers (7.8 miles) west to accommodate petitioner's desired transmitter site.<sup>4</sup>

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective August 28, 2000, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Elberton, Georgia	286A
Lavonia, Georgia	221A

7. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Radio Elberton, Inc., for Station WWRK-FM, IS MODIFIED to specify Lavonia, Georgia, in lieu of Elberton, Georgia, as its community of license, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

8. Pursuant to Commission Rule Section 1.1104(1)(k) and (3)(m), any party seeking a change

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<sup>4</sup> The coordinates for Channel 221A at Lavonia are 34-27-26 North Latitude and 83-14-27 West Longitude.

of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Radio Elberton, Inc., licensee of Station WWRK-FM, is required to submit a rule making fee in addition to the fee required for the applications to effect the change in community of license and/or upgrade.

9. IT IS FURTHER ORDERED, That the Secretary SHALL SEND a copy of this Report and Order, BY REGISTERED MAIL, RETURN RECEIPT REQUESTED, to the applicant for Channel 221A at Pendergrass, Georgia, as follows: Waves of Mercy Productions, Inc., 5319 Amherst Way, Flowery Branch, GA 30542.

10. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

11. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau